December 10, 2010

Greetings,

The Paperboard Packaging Council fully endorsees the following comments already submitted to you by the American Forest & Paper Association.

Yours truly.

\Lou Kornet
\VP & Chief of Staff

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American Forest & Paper Association

December 10, 2010

Federal Trade Commission
Office of the Secretary
Room H-135 (Annex J)
600 Pennsylvania Avenue, NW
Washington, DC 20580

RE: Proposed Revisions to Guidelines; Guides for the Use of Environmental Marketing Claims, 75 *Federal Register* 63552, October 15, 2010

Dear Sir/Madam:

The American Forest & Paper Association (AF&PA) is pleased to submit these comments in response to the Federal Trade Commission's (FTC) Proposed Revisions to the Guides for the Use of Environmental Marketing Claims (75 *Fed. Reg*. 63552). The American Forest & Paper Association is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. Our companies make products essential for everyday life from renewable and recyclable resources that sustain the environment. The forest products industry accounts for approximately 5 percent of the total U.S. manufacturing GDP. Industry companies produce about $175 billion in products annually and employ nearly 900,000 men and women, exceeding employment levels in the automotive, chemicals and plastics industries. The industry meets a payroll of approximately $50 billion annually and is among the top 10 manufacturing sector employers in 48 states.

Our members are strong advocates of truthful, non-deceptive communication with our customers and final consumers of our products. We have worked with the FTC on issues surrounding communications on "green issues" since the first iteration of the Green Guides -- and look forward to continuing our fruitful relationship. Overall, we applaud the FTC for tackling several topics which are difficult to resolve. We hope that our comments will assist in the development of final Green Guides that are useful, practical, and meaningful.

I. General Issues

The FTC has posed a number of questions pertaining to the general nature of the Green Guides.

A. Is there a continuing need for the Guides?

AF&PA agrees that there is a continuing need for the Guides, and encourages revisions that reflect consumer perceptions and marketplace changes.

B. Industry Compliance

AF&PA agrees that the Guides should apply to both business-to-business transactions as well as business-to-consumers. Indeed, AF&PA believes that these Guides are useful in not only commerce, but also in claims made by non-commercial entities that purport to evaluate materials, but who may use faulty or misleading data to do so. An example is where a not-for-profit convenes a group of businesses to use environmental claims to support a particular position – such as making claims that going "paperless" by using electronic devices is better for the environment than using paper. The FTC Green Guides should apply in these cases as well.

C. Changes in technology or economic conditions

AF&PA believes that the internet is a helpful resource to provide additional information to substantiate honest claims. We agree that allowing the use of URLs or other references to additional information is appropriate. With the proliferation of smart phones and other technology, URLs can be an effective way to qualify a claim, even before the product is purchased. However, it should not be used to qualify otherwise misleading claims that appear on labels or other advertisements.

D. International laws

AF&PA recognizes that the goals and purpose of the Guides may not necessarily be entirely congruent with international standards. However, the Guides should avoid conflicts with recognized and accepted international standards, and not attempt to create new standards. We are particularly concerned if there is a perceived difference between the FTC Green Guides and the ISO labeling standards (ISO 14020 series). While we do not believe that conformity to one would necessarily be inconsistent with conformity to the other, there should be efforts to ensure that U.S. products are not unfairly disadvantaged when a product that conforms to the Green Guides is offered in the international marketplace – as many paper products are.

E. Overlap with other federal, state or local laws

AF&PA strongly believes that the Commission must coordinate with other federal agencies to ensure definitions, interpretations and policies are consistent across the federal family. As you will see from our comments, particularly concerning recycled

content, renewable energy and carbon offsets, we believe that the policy issues must be resolved by EPA, DOE, and others before the Commission can act.

F. Life cycle analysis

As LCA methodologies continue to evolve, we agree that the Commission should not define or endorse a particular LCA methodology to substantiate environmental claims. Nor should the Commission choose one methodology over another. However, the ISO 14040 series of standards provides the internationally-recognized bases upon which LCAs should be approached. Therefore, AF&PA suggests that the Commission support the use of the ISO standards to demonstrate appropriate ways to substantiate claims.

II. Specific Claims addressed by current Guides

A. General environmental benefits claims

1. Overall approach

The current Green Guides suggest that unqualified environmental claims are difficult to substantiate and should be avoided. The revised Guides are written more clearly to discourage the use of unqualified general environmental claims.

2. Comments

a) General comments

AF&PA agrees with the Commission that unqualified general environmental benefit claims should be strongly discouraged.

AF&PA is also supportive of the Commission's admonition that the marketer must consider the context in which a qualified claim is being made to minimize the potential that deceptive implications are created.
AF&PA shares the Commission's concern about a combined qualified environmental benefit and particular attribute claim. Additional examples in this area would be helpful to provide further guidance. AF&PA has seen situations where the claim of "saving trees" has been made, but where the overall environmental benefit is not greater than for products using trees.

b) Comparative claims/General Environmental Benefit/Comparative claims

Claims encouraging electronic substitution over the use of paper (e.g., "Go Paperless - Save a Tree," or "Get your statement online - Go Green") are very common environmental claims. This type of claim includes several issues addressed in the Green Guides – general environmental benefits, a comparison, and an implied claim. While there are several examples illustrating the need to specify the attributes to which a claim relates and to substantiate all such claims, there are no examples that illustrate where certain claims may have several such issues. There are also no examples illustrating the need to ensure that the "advertiser's context does not imply deceptive environmental claims" as set forth in Section 260.4(d). It would be very helpful if the FTC would list this specific claim as an example in the Guides. The closest example in the proposed Guides is Example 4 under section 260.3(d). An example directly on point (either using the "go paperless/go green" message or something very similar) would be very helpful to help avoid consumer confusion and misinformation in this area. This example would be appropriate in either Section 260.3(d) or 260.4(d).

B. Certifications and Seals

1. Overall Approach

The current Guides do not discuss certifications and seals, except in an example. The proposed revisions provide a new section on certifications and seals clarifying that such certifications fall under the Endorsement Guides (16 CFR Part 255). The proposal also discourages the use of unqualified certifications and seals and does not establish a particular certification system.

2. Comments

a) Certifications and seals must be qualified.

AF&PA agrees with the Commission that unqualified certifications and seals are no different than unqualified general environmental claims and thus, should be discouraged.

b) Third-party certification

AF&PA agrees that third-party certification should not be a requirement to substantiate a claim.

c) FTC should support consensus-based LCA standards

AF&PA agrees that the Commission should not establish a particular certification system or provide guidance on the development of a third-party certification program. However, AF&PA believes that when an LCA is used, the Commission could support the use of consensus-based standards, such as those under ISO and the ANSI-accredited standards organizations (ASTM, GBI, etc) that have followed criteria and attributes that should be found in credible certification programs.

d) Trade Association standards should not be dismissed as biased

AF&PA understands the Commission's concerns about certifications or seals established under trade associations or non-profit organizations and the desire to have "material connections" to such entities clarified. However, trade associations or nonprofit organizations may establish programs to determine if products meet particular attributes based on specific impartial criteria. These types of seals should not require clarification of the material connection if the product meets the established criteria. In many instances, those third party criteria are available to the public, are frequently peer reviewed, and consider attributes desired by consumers.

Many trade associations and nonprofits will allow certification of both members of their organizations as well as non-members and non-participants. Moreover, the trade associations or nonprofit organizations are frequently not the entity that certifies that the product is conforming to the specific standard or criteria. Instead, independently accredited auditing bodies will often perform certification evaluations.

Where certifications or seals are based on public and peer-reviewed criteria, are enforced by accredited third parties, and/or are available to both members and non-members of an association or nonprofit, connections to the association or nonprofit are neither material nor relevant and disclosure should not be required.

e) Public availability of third party certification substantiation

AF&PA agrees with the Commission that third party certifications may constitute adequate substantiation, and that the responsibility for assuring the adequacy of the substantiation rests with the marketers. AF&PA is concerned that the Commission is not requiring that criteria used to substantiate claims to be made public. While we do not believe that the specific data for a particular product need to be available to the public, the criteria against which the product is being evaluated should be available.

C. Compostability

AF&PA is in the process of developing technical information concerning the compostability of paper products. However, that information is not yet available. In the mean time, AF&PA believes that the continued requirement that compostability be qualified is appropriate.

D. Recyclability

1. Overall Approach

The current Green Guides require that marketers assure that recycling facilities are available in the areas where products are being sold in order for the marketer to claim that a product is recyclable. AF&PA believes that this approach has worked well for the paper industry and continues to make sense.

2. Comment

Quantification of "substantial majority" and "significant percentage" has been accomplished in the paper industry through the AF&PA Community Survey that determines the availability of recycling programs across the U.S., about every two years. AF&PA believes the paper industry has the information available to make the claims as needed and additional quantitative efforts are not needed.

However, given that the industry is able to collect data showing availability of recycling programs across the country, AF&PA believes that there may be circumstances where less than 60 percent could be lowered – even to demonstrate "substantial majority."

E. Recycled Content

1. Overall Approach

The Commission has basically retained the current guidance on the use of the recycled content claim. It has advised that an unqualified recycled content claims means that the product is made of 100 percent recycled content (except for minor incidental components such as precipitated calcium carbonate in alkaline freesheet). The Guides also retain the provision that the marketer need not clarify what percent of recycled content is pre- or post-consumer, but may do so. The Commission has determined it would not eliminate the distinction between pre- and post-consumer recycled content and has declined to use the ISO definition of post-consumer. The Commission has also asked for input regarding the methodology used to determine recycled content amounts. Lastly, the Commission seeks advice regarding the public perception that "made with recycled content" equates to "recyclable."

2. Comments

a) The Commission should eliminate the pre- and post-consumer distinction

AF&PA advocated in earlier comments (May 18, 2008), that the FTC should eliminate the pre- and post-consumer distinction.

AF&PA believes that the pre- and post-consumer distinctions are not meaningful relating to recycled content because the fibers that are recycled undergo the same processing, regardless of source. The notion that there is something "better" or more environmentally friendly about post-consumer fiber is a misconception. Frankly, so-called "pre-consumer" fibers are more valuable because they are less contaminated. In addition, because "pre-consumer" fibers have been a steady source of fiber for pulp manufacturers, the increases that are seen in the amount of recovered fiber are primarily from the "post-consumer" arena.

b) The FTC should adopt the ISO definition of "post-consumer" if the distinction is retained

Relating to the ISO definition of "post-consumer," the Commission stated (see 75 FR 63576) that "it is unlikely" that consumers believe that unsold magazines are post-consumer. AF&PA is concerned that the Commission makes an assumption about perception without substantiating evidence, yet they dismiss others who make assumptions without the market studies. AF&PA continues to believe that unsold magazines and newspapers, trim from envelope manufacturers, and similar used paper (which have been used by customers for their intended use – printing or production of products – and are collected to avoid being placed in the solid waste stream) are indeed post-consumer and should be considered such. Therefore, AF&PA urges the FTC to reconsider its decision and adapt the ISO definition of post-consumer.

c) The Commission should retain the annual weighted average method of determining recycled content, but also recognize alternative methods

AF&PA believes that the Commission should retain the use of the annual weighted average of recycled content, but also allow other methods if they can be substantiated and if they are used consistently by the manufacturer. In the papermaking process, recycled and virgin fibers become mixed and a single sheet of paper may have as little as 10 percent recycled content in it – but another may have 35 percent recycled fibers. The annual weighted average addresses the reality of the business and does not

mislead consumers if the materials coming out of the mill contain – on average across a year – a certain percent of recycled fibers. The FTC should retain this approach.

However, for calculating the amount of certified forest content in a product under forest certification standards, "offset-based" approaches are more common and should be recognized by the Commission because they may also apply to recycled content. All of the major forest certification programs in the United States, and across the world – The Sustainable Forestry Initiative (SFI), the Forest Stewardship Council (FSC) and the Program for the Endorsement of Forest Certification (PEFC) – have a similar way to calculate certified forest content called the volume credit method or the credit system. The credit system is based on the premise that a manufacturer may only sell or label the amount of certified forest content that comes into the facility. For example, if a company has 100 tons of certified forest fiber, and that fiber is mixed with the other non-certified forest fiber in the manufacturing process, the manufacturer may only sell or label 100 tons of end product as certified.

The credit system is the only practical method of accounting for certified forest content where large quantities of fiber from a large number of forest landowners are used in varying quantities. While the FTC has not said the volume credit method is unacceptable across the board, if the FTC's comments regarding the credit method application in the context of recycled content were also applied to forest certification, this would have impacts for U.S. companies who trade in international markets. The United Kingdom has developed a wood and paper purchasing policy by which wood and paper products must contain at least 70% certified forest content to sell to the United Kingdom government. They recognize the volume credit method as an acceptable means to meet the 70% threshold they've established. Preventing U.S. companies from utilizing this calculation method could have implications on U.S. trade to countries like the United Kingdom.

d) Continued education will help the public understand the difference between "recycled content" and "recyclable"

AF&PA believes that it is not necessary to qualify a recycled content claim to address FTC's concern that the public is misreading a straightforward claim of "recycled content" to mean "recyclable" Perhaps the Commission might support additional education efforts to assure that the public understands the differences between the two claims. AF&PA supports many programs that help to educate the public about the qualities of paper and would be happy to work with the FTC to enhance those programs

e) The Commission should retain the factors used to determine recycled content

The Commission asks whether any changes should be made to the factors used to determine if material is diverted from the solid waste stream and in particular whether, overtime, the regular reuse of a material (rather than disposal) still constitutes use of recycled materials. AF&PA strongly believes that the Commission should retain the current approach to evaluating whether materials are diverted from the solid waste stream. We also believe that it is illogical to change the "recycled" nature of a material just because it has become a "normal" practice to recycle it. These materials would still, otherwise, be disposed in some way if they were not recycled, so why would their status change? AF&PA agrees with the Commission not to change their definition.

F. "Free-of" and "Non-toxic" Claims

1. "Free-of" Claims

a) Overall Approach

The Commission expands its current guidance to include "free-of" claims. The Commission does not allow a marketer to state free-of a substance if there are other substances in the product that pose the same or similar environmental risk as the substance that is not present. Marketing for a product should also not claim that the product is free-of a substance (even if it is) if that substance has never been associated with that product category. The commission also states that in certain circumstances, free-of claims are appropriate if the substance is present in the product but it is in an amount that is at or below a de minimis amount. The Commission is proposing free-of claims to convey additional environmental claims.

b) Qualifying Free-of Claims

AF&PA supports the FTC's proposal of allowing a "free-of" claim even if the product contains the substance but is at an amount at or below a de minimis since this amount is inconsequential to consumers. We agree the only element that should be of interest to consumers would be whether the substance present in a product is in an amount that would result in an unsafe exposure to a consumer. Therefore if the substance is in an amount that would be inconsequential to the consumer, the manufacturer should be able to make a 'free-of' claim.

Furthermore, the analysis to determine the exposure should be based on methods approved by the appropriate agency and to levels that are deemed safe by those agencies.

2. Non-toxic Claims

a) Overall Approach

The Commission recommends that a 'non-toxic' claim would convey that the product is non-toxic for human health and the environment generally. FTC notes that acute toxicity – which measures the effects of the exposure from the substance during a short time period, may not be appropriate if the substance poses a threat to humans or the environment when exposure is over a long period of time.

b) Qualifying Non-toxic Claims

AF&PA agrees with the FTC proposal that would allow marketers to claim the product is "non-toxic" if the product does not pose a health threat for humans and the environment.

However, AF&PA believes that the FTC should recognize that qualification of a "non-toxic" claim should rely on scientifically defensible data, and exposure & risk assessment methodologies.

The FTC guidance/requirements regarding "non-toxic claims" should require the qualifying assessments consider the criteria defined in the Globally Harmonized System (GHS) for Classification and Labeling of Chemicals which is being adopted by the U.S. EPA, OSHA, CPSC, DOT, and other federal agencies. The GHS is a worldwide initiative to promote standard criteria for classifying chemicals according to their health, physical and environmental hazards. The GHS provides a helpful framework of criteria for evaluating and classifying the potential human and environmental effects of chemical substances. The criteria include definitions, concentrations and a rationale for decision making for single substances and mixtures regarding human and environmental health.

As such, if a marketer were to make "non-toxic" claims, the chemicals identified should be labeled consistent with the GHS program.

G. Source Reduction Claims – AF&PA agrees that no change should be made in this area.

H. Sustainable Claims - AF&PA agrees that determinations should continue on a case-by-case basis because there is no agreed-upon definition of "sustainable" – certainly none that the average consumer would know and understand automatically**.**

I. Renewable Material Claims

1. AF&PA Interest

The foundation of the forest products industry is wood fiber—a renewable resource. While the products AF&PA members manufacture are varied (paper, packaging, bio-based chemicals and other bio-based products, and wood products), they all start with a renewable resource, and AF&PA members characterize their products as "renewable."

2. Overall Approach

The Commission states that its research indicates confusion among consumers as to certain aspects of claims regarding renewability. Specifically, the research apparently indicates that consumers interpret "renewable" to also mean made with recycled content, recyclable, and biodegradable. As discussed below, it proposes that marketers avoid unqualified renewability claims and that that they provide specific additional information about the claim. Overall, however, it is not proposing to define the term "renewable" or endorse any particular test to substantiate such claims. AF&PA supports the Commission's decision not to provide such overall guidance, as it likely would place the Commission in the role of establishing environmental standards or establishing environmental policy, roles the Commission correctly notes it does not have authority to play.

3. Qualifying Renewable Materials Claims

To avoid confusion, the Commission proposes that marketers qualify renewable materials claims by "providing which renewable materials were used, how the materials were sourced, and why the materials are renewable." 75 Fed. Reg. 63588. It provides an example of an unqualified claim that bamboo flooring is "renewable," stating that the following qualification likely would render the claim not deceptive: "Our flooring is made from 100% bamboo, a fast-growing plant, which we cultivate at the same rate, or faster, than we use it." Section 260.15(c), Example 1, 75 Fed. Reg. 63607. Example 3 on the same page makes a similar point, that an unqualified "renewable materials" claim likely would be deceptive, unless the marketer can substantiate that the product is "recyclable, made with recycled content, or biodegradable," because consumers likely will perceive products with a "renewable materials" claim as having these environmental benefits.

AF&PA does not agree with the FTC proposal. We believe it will perpetuate confusion to continue to conflate the concepts of "renewable" with "recyclable," "made with recycled content" and "biodegradable." We would further object if Example 1 means the FTC is requiring that a marketer is required to somehow match the rate of harvest of the renewable material used to manufacture a product with the particular product that is

being sold. This would place a significant burden on manufacturers, and in the case of wood products is not necessary. We suggest, instead, the example of forest products to demonstrate that they are made from renewable materials. The forest products industry plants on average 1.7 million trees daily, and millions of additional seedlings regenerate naturally. Moreover, in all regions of the U.S. the amount of wood fiber grown exceeds removals. Thus, it is clear that forest products are made from renewable materials.

4. Quantity of Renewable Materials

Similar to recycled content claims, FTC research indicates that unqualified renewable materials claims are interpreted by consumers to mean "all" of the materials in the product or package are renewable. The Commission, therefore, proposes that marketers qualify renewable materials claims by providing the amount of the renewable material in the product or package, "unless the entire product or package, excluding minor, incremental components" is made from renewable materials. See Section 260.15(c), Example 2. 75 Fed. Reg. 63607. AF&PA has supported similar FTC guidance on recycled content, and supports this guidance for renewable materials claims, as well.

5. Consistency of the USDA BioPreferred Program with Green Guides

AF&PA is concerned that the Commission did not address how the USDA BioPreferred "bio-based" label is consistent with the Green Guides. AF&PA has commented to the USDA, expressing concern that the BioPreferred program as well as their upcoming bio-based labeling program must be consistent with the FTC Green Guides. AF&PA suggests that the Commission might use the BioPreferred label program as an example of a single attribute program that requires additional qualification and substantiation.

J. Renewable Energy Claims

The FTC reviewed four aspects of renewable energy claims. Below we discuss AF&PA's interest in renewable energy and then consider the FTC's proposals in each of these areas.

1. AF&PA Interest

The forest products industry is the leading producer and user of renewable biomass energy in the U.S. In fact, the energy we produce from biomass exceeds the total energy produced from solar, wind, and geothermal sources combined. Over sixty-five percent of the energy used at AF&PA member paper and wood products facilities is generated from renewable biomass. Some AF&PA members sell Renewable Energy

Credits (RECs) associated with generation of renewable electricity, which is a portion of the renewable energy they generate.

2. General Comment

The FTC should take care in its preamble and rule discussion of "renewable energy" to carefully distinguish between renewable *energy* and renewable *electricity*. For example, as stated above, the forest products industry generates substantial quantities of renewable energy, but most of that is thermal energy, or steam. Only a portion of that renewable energy is in the form of electricity. As a general matter, most RECs are associated with the generation of electricity only, not other forms of renewable energy, although some states do allow the generation of RECs for other forms of energy (e.g., thermal energy or "clean energy") or for energy efficiency. Accordingly the discussion in the preamble about RECs should make the point that most RECs are for renewable electricity (acknowledging the other kinds of RECs just mentioned) and then state that because of the prevalence of renewable electricity RECs, the remaining discussion and the rule will be limited to renewable electricity, unless indicated. The FTC should also indicate that generally one REC is equivalent to one megawatt hour of electricity.

3. Definition

Some commenters stated there may be some confusion on the part of consumers as to the nature of renewable energy claims. The FTC, however, ultimately concluded there is a general understanding that renewable energy is energy that it not derived from fossil fuel[1]. Accordingly, the FTC is not proposing other guidance on which specific energy sources are renewable, but it is proposing that marketers disclose the type or sources in their renewable energy claims.

AF&PA does not support this latter proposal. As the FTC indicated, "there appears to be a consensus, however, that renewable energy excludes fossil fuels." 75 Fed. Reg. 63591. FTC research also indicates that a significant minority of consumers have the same understanding. Thus, there is no need for the guidance proposed by the FTC that marketers also disclose the type or sources of renewable energy in their claims. If a marketer claims it is using "renewable energy" in its manufacturing process and the energy used is not fossil fuel, then the claim is consistent with the common understanding of the term. Moreover, if, as the FTC research indicates, consumers think that a product manufactured with "renewable energy" also means the product is manufactured from renewable materials or is recyclable, there is no reason to believe that requiring the marketer to provide the source or type of the renewable energy will clear up that confusion. Finally, to the extent that a marketer is basing a renewable

[1] It is unclear from the discussion of the research undertaken by the FTC whether consumers were asked their opinions on nuclear energy and whether it is "renewable."

energy claim on the use of RECs, because the definitions of RECs vary across the country, it would be extremely difficult, if not impossible to identify the source of the renewable energy.

4. Amount of Renewable Energy

The Commission also noted that unqualified claims about renewable energy use could be perceived by some consumers as implying "all" the energy used in manufacturing the product was renewable. The Commission states in the preamble that marketers not use unqualified "made with renewable energy" claims unless "all, or virtually all, of the significant manufacturing processes used to make the product are powered by renewable energy or powered by conventionally produced energy that is offset by RECs." (Emphasis added). 75 Fed.Reg. 63592. However, the proposed regulation states that marketers should not make unsubstantiated renewable energy claims "if power derived from fossil fuels is used to manufacture any part of the advertised item or is used to power any part of the advertised service." Proposed Section 260.14(a).

AF&PA suggest that "any" is a much more difficult (if not impossible) standard to meet and does not reflect the FTC's intent as expressed in the preamble. The regulation should use the same "all, or virtually all" phrase as is used in the Preamble. Indeed, subsection 260.14(a) is in direct conflict with subsection (c), which correctly uses the "all or virtually all" phrase, so it should be substantially revised or eliminated.

AF&PA members have been steadily increasing the percentage of renewable energy used in their manufacturing processes. Most members that might make renewable energy claims would have to qualify those claims, however, because "all, or virtually all" of their energy demand is not met by renewable energy. This raises the question of how a pulp and paper mill, which can have numerous product lines and generate and use both fossil-based and renewable energy, should allocate the differing kinds of energy to various products. We discuss this below under "Double Counting".

Finally, in response to the FTC's question, we do not believe that marketers should be precluded from making an unqualified renewable energy claim if their delivery trucks run on fossil fuel, as we would expect emissions from the manufacturers' delivery trucks would be a small portion of overall emissions. Moreover, non-fossil fueled vehicles are still relatively rare and such a requirement would virtually preclude claims based on RECs.

5. REC Disclosures

We appreciate the FTC's description of the definition and use of RECs. We agree with the Commission that additional guidance is not needed requiring those that are making renewal energy claims to specifically indicate that their renewable electricity claims are

partially based on RECs. As the FTC noted, there is no evidence that this information would be material to consumers.

6. Geographic Location of Renewable Energy Claims

The Commission discussed whether consumers think there is a geographical component to renewable energy claims and whether they may interpret claims as indicating that the renewable energy was generated locally. The Commission is not proposing new guidance in this area, but suggests, consistent with the overall caution against unsubstantiated claims, that if a claim implies the renewable energy yields local benefits, then marketers should inform consumers that this is not the case. AF&PA does not see the need for any particular additional qualification about geographic origin, unless, as noted, there was something about a particular claim that would lead a reasonable consumer to perceive some local benefit.

7. Double Counting

The Commission proposes that a manufacturer generating its own renewable power that is used in its manufacturing process cannot claim that its products are made with renewable power, if it has sold the RECs associated with that power. The Commission believes that would be "double counting" because by selling the RECs, the manufacturer has sold the green attributes of that power. AF&PA believes this position is consistent with what is represented by the creation and sale of RECs and should be retained in final Guides.

Section 260.14(d), Example 1, includes an example that a marketer cannot claim its products are "made with wind power" if the RECs it purchases represent only half of its energy needs.[2] It is appropriate that the FTC did not include more specific examples to depict deceptive claims about the amount of renewable energy generated and used at a facility. Clearly, manufacturers should not make claims that would lead consumers to believe a greater percentage of renewable energy is being generated and used at a facility than is the case. However, subject to the general guidance in the following paragraph, they should have flexibility to freely calculate and account for their renewable energy and electricity usage within the facility, and how RECs are accounted for. These calculations can become very technical and complicated and it would be extremely difficult for the FTC to develop sufficient examples to cover the complexity of the scenarios in the pulp and paper industry, let alone all industries.

Of course, manufacturers that make these calculations must have substantiation to demonstrate how the calculations were done, how "double counting" was avoided, and why the allocations are credible. No matter what allocation method is used, as stated

[2] Please see the General Comment above about using the terms "electricity" v "energy."

above, manufacturers can only use RECs to offset non-renewable electricity that is purchased or produced, and they cannot use RECs to offset fossil fuel purchased and used in the manufacturing process. On the other hand, it also should be clear that when a manufacturer sells RECs, it is only precluded from claiming it is using self generated renewable electricity for the electricity represented by the REC. Selling RECs does not detract in any way from the manufacturer being able to make claims about the other renewable energy it is generating and using.[3]

K. Carbon Offsets

1. General Approach

The Guides include an extensive discussion of carbon offsets, and analyzes many of the issues regarding the use of offsets. While the Commission is proposing to provide guidance on certain aspects of offsets, it generally is refraining from providing extensive guidance on offsets, recognizing "the extent of the Commission's authority, the available consumer perception evidence, and the ongoing policy debates among experts in the field concerning the appropriate test to substantiate offset claims." 75 Fed Reg 63596. AF&PA supports this overall approach and it is consistent with our comments filed after the FTC workshop on RECs and offsets.[4] For example, as the Commission noted, it does not have authority to create definitions or standards for environmental terms, so it is not proposing to define an "offset," nor should it establish guidance on allowable offset projects or uniform methodologies, because it would place the Commission in the role of creating environmental policy.

Similarly the concept of "additionality" is a particularly controversial component of offsets policy. While "regulatory" additionality is generally viewed as less controversial, we recommend that the FTC even refrain from offering guidance on regulatory additionality at this time, to avoid the role of creating environmental policy.

While in most mainstream offset protocols the carbon actually has to be stored (e.g. forests) or avoided emission taken place in order to register and sell it and offset credit. Often 3rd party verification is required. However, in some instances the credit may be sold as a way to fund the activity that will store the carbon or avoid an emission in the future. For example, a consumer would buy the offset and the seller would use the proceeds to plant a tree that will eventually provide the offset function. AF&PA agrees that in these cases it is important for marketers to make the distinction between

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[3] As stated, while RECs generally represent renewable *electricity,* some states do allow the generation of RECs for other forms of energy (e.g., thermal energy or "clean energy") or for energy efficiency. To the extent marketers are making claims based on such RECs, it would be acceptable for them to claim they are offsetting non-renewable energy.

[4] AF&PA Comments dated January 25, 2008.

purchases of offsets that have occurred in the past or will occur in the future, even if it is just in the description of the program itself.

AF&PA agrees it is not necessary to disclose the type of the offset credit. While some marketers may find it beneficial to disclose the source of the offset credit when known, others may purchase an offset credit from an exchange where its specific origin may be unknown.

2. Substantiating Carbon Offset Claims—Use of RECs

Consistent with its general approach to offsets, the Commission is not providing any specific guidance on the use of RECs as a mechanism for substantiating carbon offsets. Again, AF&PA supports this approach as the use of RECs to substantiate carbon offsets is an issue that is extremely complicated and one for which policy is continuing to develop. Commission guidance in this area would have the effect of putting the FTC in a policy setting role, one it correctly is careful to avoid.

III. Conclusion

AF&PA appreciates the opportunity to provide our comments on the proposed revision to the Green Guides. We hope you will find them to be useful and we look forward to working with you to develop useful final guidance to marketers and the public.

Sincerely yours,

Cathy Foley,
Vice President
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cc: Laura Koss, FTC